



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES–2013–0028]

[4500030114]

RIN 1018–AZ38

Endangered and Threatened Wildlife and Plants; Designating Critical Habitat for Three Plant Species on Hawaii Island

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on our October 17, 2012, proposed designation of critical habitat for three plant species (*Bidens micrantha* ssp. *ctenophylla* (kookoolau), *Isodendron pyrifolium* (wahine noho kula), and *Mezoneuron kawaiense* (uhiuhi)) on Hawaii Island under the Endangered Species Act of 1973, as amended (Act). We are reopening the comment period to allow all interested parties further opportunity to comment on areas that we are considering for exclusion from critical habitat designation in the final rule. Comments previously submitted on the proposed rule do not need to be resubmitted, as they will be fully considered in preparation of the final rule.

DATES: *Written Comments:* We will consider comments received or postmarked on or before [INSERT DATE 15 DAYS AFTER DATE OF FEDERAL REGISTER PUBLICATION]. Please note comments submitted electronically using the Federal

eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date. If you are submitting your comments by hard copy, please mail them by **[INSERT DATE 15 DAYS AFTER DATE OF FEDERAL REGISTER PUBLICATION]**, to ensure that we receive them in time to give them full consideration.

ADDRESSES: *Document Availability:* You may obtain copies of the October 17, 2012, proposed rule, this document, and the draft economic analysis of the proposed designation of critical habitat at <http://www.regulations.gov> at Docket Number FWS–R1–ES–2013–0028, from the Pacific Islands Fish and Wildlife Office’s website (<http://www.fws.gov/pacificislands/>), or by contacting the Pacific Islands Fish and Wildlife Office directly (see **FOR FURTHER INFORMATION CONTACT**).

Written Comments: You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal:

<http://www.regulations.gov>. Search for Docket No. FWS–R1–ES–2013–0028, which is the docket number for this rulemaking, and follow the directions for submitting a comment.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R1–ES–2013–0028; Division of Policy, Performance, and Management Programs; U.S. Fish and Wildlife Service; MS: BPHC; 5275 Leesburg Pike; Falls Church, VA 22041-3803.

We will post all comments we receive on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see **Public**

Comments, below, for more information).

FOR FURTHER INFORMATION CONTACT: Mary Abrams, Field Supervisor, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3-122, Honolulu, HI 96850; by telephone at 808–792–9400; or by facsimile at 808–792–9581. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We will accept written comments and information during this reopened comment period on our proposed designation of critical habitat for *Bidens micrantha* ssp. *ctenophylla* (kookoolau), *Mezoneuron kawaiense* (uhiuhi), and *Isodendrion pyriform* (wahine noho kula), that was published in the **Federal Register** on October 17, 2012 (77 FR 63928). In that proposed rule, we proposed to list 15 species on the Hawaiian island of Hawaii as endangered species under the Act (16 U.S.C. 1531 et seq.), to designate critical habitat for one of these species, and to designate critical habitat for two plant species that were listed as endangered species in 1986 and 1994. We finalized the listing determinations of those 15 species on October 29, 2013 (78 FR 64638). Critical habitat has not yet been finalized. We previously reopened the comment period on the proposed critical habitat twice: once for 30 days, on April 30, 2013 (78 FR 25243), and again for 60 days on July 2, 2013 (78 FR 39698).

In particular we are seeking public comment on the areas that we are considering for exclusion from the final designation of critical habitat for *Bidens micrantha* ssp.

ctenophylla (kookoolau), *Mezoneuron kawaiense* (uhiuhi), and *Isodendrion pyrifolium* (wahine noho kula). Although we previously indicated that we were considering the possible exclusion of non-Federal lands, especially areas in private ownership, and asked for comment on the broad public benefits of encouraging collaborative conservation efforts with local and private partners, we are now offering an additional opportunity for public comment on this issue. Subsequent to the publication of the proposed rule, conservation agreements with the Service were signed by several of the landowners previously identified for possible exclusion. Furthermore, the Service has identified some additional areas considered for exclusion based on partnerships with landowners who signed conservation agreements with the Service subsequent to the publication of the proposed rule. Therefore, we are offering another opportunity for public comment on the broad public benefits of encouraging collaborative conservation efforts with local and private partners. We will consider information and recommendations from all interested parties.

We are particularly interested in comments concerning whether the benefits of excluding any particular area from critical habitat outweigh the benefits of including that area as critical habitat under section 4(b)(2) of the Act (16 U.S.C. 1533(b)(2)), after considering the potential impacts and benefits of the proposed critical habitat designation. We are considering the possible exclusion of non-Federal lands, especially areas in private ownership, and whether the benefits of exclusion may outweigh the benefits of inclusion of those areas. We, therefore, request specific information on:

- The benefits of including any specific areas in the final designation and supporting rationale.
- The benefits of excluding any specific areas from the final designation and supporting rationale.
- Whether any specific exclusions may result in the extinction of the species and why.

For non-Federal lands in particular, we are interested in information regarding the potential benefits of including such lands in critical habitat versus the benefits of excluding such lands from critical habitat. In weighing the potential benefits of exclusion versus inclusion of non-Federal lands, the Service may consider whether existing partnership agreements provide for the management of the species. This consideration may include, for example, the status of conservation efforts, the effectiveness of any conservation agreements to conserve the species, and the likelihood of the conservation agreement's future implementation. In addition, we may consider the formation or fostering of partnerships with non-Federal entities that result in positive conservation outcomes for the species, as evidenced by the development of conservation agreements, as a potential benefit of exclusion. We request comment on the broad public benefits of encouraging collaborative efforts and encouraging local and private conservation efforts.

Our final determination concerning the designation of critical habitat for *Bidens micrantha* ssp. *ctenophylla*, *Mezoneuron kawaiense*, and *Isodendrion pyrifolium* will take into consideration all written comments and information we receive during all comment

periods; from peer reviewers; and during the public information meeting, as well as comments and public testimony we received during the public hearing, that we held in Kailua-Kona, Hawaii, on May 15, 2013 (see 78 FR 25243; April 30, 2013). The comments will be included in the public record for this rulemaking, and we will fully consider them in the preparation of our final determination. On the basis of peer reviewer and public comments, as well as any new information we may receive during the development of our final determination concerning critical habitat, we may find (1) that areas within the proposed critical habitat designation do not meet the definition of critical habitat, (2) that some modifications to the described boundaries are appropriate, or (3) that areas may or may not be appropriate for exclusion under section 4(b)(2) of the Act.

If you submitted comments or information on the proposed rule (October 17, 2012; 77 FR 63928) during one of the three previous open comment periods from October 17, 2012, through December 17, 2012 (77 FR 63928), April 30, 2013, through May 30, 2013 (78 FR 25243), and July 2, 2013, through September 3, 2013 (78 FR 39698), or at the public information meeting or hearing on May 15, 2013 (78 FR 25243), please do not resubmit them. We will fully consider them in the preparation of our final determinations.

You may submit your comments by one of the methods listed in **ADDRESSES**. We will post your entire comment—including your personal identifying information—on <http://www.regulations.gov>. If you submit your comment via U.S. mail, you may request at the top of your document that we withhold personal information such as your street address, phone number, or e-mail address from public review; however, we cannot

guarantee that we will be able to do so.

Comments and materials we receive will be available for public inspection on <http://www.regulations.gov> at Docket No. FWS–R1–ES–2013–0028, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

Previous Federal Actions

On October 17, 2012, we published a proposed rule (77 FR 63928) to list 15 species on the Hawaiian island of Hawaii as endangered species under the Act, to designate critical habitat for one of these species, *Bidens micrantha* ssp. *ctenophylla*, and to designate critical habitat for two previously listed plant species, *Mezoneuron kawaiense* (51 FR 24672, July 8, 1986) and *Isodendrion pyriform* (59 FR 10305, March 3, 1994). We proposed to designate 18,766 acres (ac) (7,597 hectares (ha)) on the island of Hawaii. Approximately 55 percent of the area proposed as critical habitat is already designated as critical habitat for 41 plants and the Blackburn's sphinx moth (*Manduca blackburni*), for which critical habitat was designated on July 2, 2003 (68 FR 39624), and June 10, 2003 (68 FR 34710), respectively.

In our October 17, 2012, proposed rule (77 FR 63928), we announced a 60-day comment period, which began on October 17, 2012, and ended on December 17, 2012. On April 30, 2013, we announced the availability of the draft economic analysis on the proposed designation of critical habitat, and reopened the comment period on our

proposed rule, the draft economic analysis, and amended required determinations for another 30 days, ending May 30, 2013 (78 FR 25243). On April 30, 2013, we also announced a public information meeting in Kailua-Kona, Hawaii, which we held on May 15, 2013, followed by a public hearing on that same day (78 FR 25243). On July 2, 2013, we announced the reopening of the comment period on the proposed designation of critical habitat and the draft economic analysis for an additional 60 days, through September 3, 2013 (78 FR 39698).

Critical Habitat

Section 3 of the Act defines critical habitat as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency unless it is exempted pursuant to the provisions of the Act (16 U.S.C. 1536(e)-(n) and (p)). Federal agencies proposing actions affecting critical habitat must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

Consistent with the best scientific data available, the standards of the Act, and our regulations, we initially identified and proposed a total of 18,766 ac (7,597 ha) in 7 units

for three plant species located on the island of Hawaii, that meet the definition of critical habitat. In addition, the Act provides the Secretary with the discretion to exclude certain areas from the final designation after taking into consideration economic impacts, impacts on national security, and any other relevant impacts of specifying any particular area as critical habitat.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if she determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless she determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan. In the case of *Bidens micrantha* ssp. *ctenophylla*, *Isodendron pyrifolium*, and *Mezoneuron kavaense*, the benefits of critical habitat include public awareness of the

presence of the three species and the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection for the three species due to protection from adverse modification or destruction of critical habitat. In practice, situations with a Federal nexus exist primarily on Federal lands or for projects undertaken by Federal agencies.

In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise her discretion to exclude the area only if such exclusion will not result in the extinction of the species.

When identifying the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive due to the protection from destruction or adverse modification as a result of actions with a Federal nexus; the educational benefits of mapping essential habitat for recovery of the listed species; and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat. Additionally, continued implementation of a management plan that provides equal to or more conservation than a critical habitat designation would reduce the benefits of including that specific area in the critical habitat designation.

When identifying the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation and the continuation, strengthening, or encouragement of partnerships.

When we evaluate a management plan during our consideration of the benefits of exclusion, we assess a variety of factors, including but not limited to, whether the plan is finalized, how it provides for the conservation of the essential physical or biological features, whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan will be implemented into the future, whether the conservation strategies in the plan are likely to be effective, and whether the plan contains a monitoring program or adaptive management to ensure that the conservation measures are effective and can be adapted in the future in response to new information.

After identifying the benefits of inclusion and the benefits of exclusion, we carefully weigh the two sides to evaluate whether the benefits of exclusion outweigh those of inclusion. If our analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, we then determine whether exclusion would result in extinction of the species. If exclusion of an area from critical habitat will result in extinction, we will not exclude it from the designation.

Based on the information provided by entities seeking exclusion, as well as any additional public comments received, we will evaluate whether certain lands in proposed critical habitat Hawaii—Lowland Dry—Units 31, 32, 33, 34, and 35 are appropriate for exclusion from the final designation under section 4(b)(2) of the Act. If the analysis indicates that the benefits of excluding lands from the final designation outweigh the benefits of designating those lands as critical habitat, then the Secretary may exercise her discretion to exclude the lands from the final designation.

In our October 17, 2012, proposed rule (77 FR 63928), we identified areas in four of the proposed critical habitat units for potential exclusion from the final critical habitat designation for *Bidens micrantha* ssp. *ctenophylla*, *Isodendrion pyrifolium*, and *Mezoneuron kavaense* under section 4(b)(2) of the Act. Table 1 provides approximate areas (ac, ha) of these lands that meet the definition of critical habitat but were proposed for consideration for possible exclusion under section 4(b)(2) of the Act from the final critical habitat rule.

Table 1. Areas considered for exclusion in the 2012 proposed rule (77 FR 63928), by critical habitat unit.

Unit	Specific Area	Areas Meeting the Definition of Critical Habitat, in Acres (Hectares)	Areas Considered for Possible Exclusion, in Acres (Hectares)
Hawaii—Lowland Dry—Unit 31	Kamehameha Schools	2,834 (1,147)	2,834 (1,147)
Hawaii—Lowland Dry—Unit 33	Palamanui Global Holdings LLC	502 (203)	502 (203)
Hawaii—Lowland Dry—Unit 34	Kaloko Properties Corp.	48 (19)	48 (19)
	SCD-TSA Kaloko	558 (226)	558 (226)

	Makai LLC		
	TSA Corporation	26 (10)	26 (10)
	Lanikai Properties	47 (19)	47 (19)
Hawaii—Lowland Dry—Unit 35	Department of Hawaiian Home Lands	355 (144)	87 (35)

We are now considering whether to exclude additional areas. Table 2 below provides approximate areas (ac, ha) of the additional lands that meet the definition of critical habitat but are now under our consideration for possible exclusion under section 4(b)(2) of the Act from the final critical habitat rule. In the paragraphs that follow below, we provide a detailed analysis of our consideration of these additional lands for exclusion under section 4(b)(2) of the Act.

Table 2. Additional areas considered for exclusion, by critical habitat unit.

Unit	Specific Area	Areas Meeting the Definition of Critical Habitat, in Acres (Hectares)	Areas Considered for Possible Exclusion, in Acres (Hectares)
Hawaii—Lowland Dry—Unit 32	Waikoloa Village Association	1,758 (711)	1,758 (711)
Hawaii—Lowland	Department of	91 (30)	91 (30)

Dry—Unit 33	Hawaiian Home Lands		
Hawaii—Lowland Dry—Unit 35	County of Hawaii (State)	165 (67)	165 (67)
	Hawaii Housing and Finance Development Corporation (State)	30 (12)	30 (12)
	Department of Hawaiian Home Lands	401 (165)	401 (165)
	Forest City Kona	265 (107)	265 (107)
	Queen Liliuokalani Trust	302 (122)	302 (122)

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors including whether there are permitted conservation plans covering the species in the area such as habitat conservation plans, safe harbor agreements, or candidate conservation agreements with assurances, or whether there are non-permitted conservation agreements and partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at the existence of tribal

conservation plans and partnerships and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation.

We sometimes exclude specific areas from critical habitat designations based in part on the existence of private or other non-Federal conservation plans or agreements and their attendant partnerships. A conservation plan or agreement describes actions that are designed to provide for the conservation needs of a species and its habitat, and may include actions to reduce or mitigate negative effects on the species caused by activities on or adjacent to the area covered by the plan. Conservation plans or agreements can be developed by private entities with no Service involvement, or in partnership with the Service.

We evaluate a variety of factors to determine how the benefits of any exclusion and the benefits of inclusion are affected by the existence of private or other non-Federal conservation plans or agreements and their attendant partnerships when we undertake a discretionary section 4(b)(2) exclusion analysis. A non-exhaustive list of factors that we will consider for non-permitted plans or agreements is shown below. These factors are not required elements of plans or agreements, and all items may not apply to every plan or agreement.

- (i) The degree to which the plan or agreement provides for the conservation of the species or the essential physical or biological features (if present) for the species;
- (ii) Whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan or agreement will be implemented;
- (iii) The demonstrated implementation and success of the chosen conservation measures;
- (iv) The degree to which the record of the plan supports a conclusion that a critical

habitat designation would impair the realization of benefits expected from the plan, agreement, or partnership;

(v) The extent of public participation in the development of the conservation plan;

(vi) The degree to which there has been agency review and required determinations (e.g., State regulatory requirements), as necessary and appropriate;

(vii) Whether National Environmental Policy Act (NEPA; 42 U.S.C. 4321 et seq.) compliance was required; and

(viii) Whether the plan or agreement contains a monitoring program and adaptive management to ensure that the conservation measures are effective and can be modified in the future in response to new information.

In the proposed rule (October 17, 2012; 77 FR 63928), we identified several specific areas under consideration for exclusion from critical habitat based on the landowner's conservation partnerships; these exclusions totaled approximately 4,099 ac (1,659 ha) of State land and private lands. The areas identified for potential exclusion, as detailed in our proposed rule, included lands owned or managed by Kamehameha Schools; Palamanui Global Holdings, LLC; Kaloko Properties Corp.; Lanihau Properties; SCD-TSA Kaloko Makai, LLC; TSA Corporation; and the Department of Hawaiian Homelands. We asked for public comment on the potential exclusions, and for information regarding the potential benefits of including private lands in critical habitat versus the benefits of excluding such lands from critical habitat. After publication of the proposed rule, three of these landowners (Palamanui Global Holdings, LLC; Lanihau Properties; and the Department of Hawaiian Homelands) signed memoranda of understanding with the Service covering actions beneficial to *Bidens micrantha* ssp. *ctenophylla*, *Mezoneuron kawaiense*, and *Isodendrion pyrifolium*. Furthermore, in the proposed rule we noted that exclusions in the final rule would not necessarily be limited to those we initially identified in the proposed rule. Subsequent to publication of the

proposed rule, we identified additional private or non-Federal lands that we are considering for exclusion from critical habitat, based on conservation partnerships with the Service. These include lands owned or managed by Waikoloa Village Association, County of Hawaii, Hawaii Housing and Finance Development Corporation, Forest City Kona, and Queen Liliuokalani Trust. Therefore, at this time we request public comment on the following: the benefits of including any specific areas in the final designation and supporting rationale, benefits of excluding any specific areas from the final designation and supporting rationale, and whether any specific exclusions may result in the extinction of the species and why. The three of the areas originally proposed for exclusion, as well as the additional areas being considered for exclusion, are briefly described below.

Certain Areas Considered for Exclusion in the 2012 Proposed Rule

Palamanui Global Holdings, LLC

In the October 17, 2012, proposed rule (77 FR 63928), we stated that we were considering the exclusion of 502 ac (203 ha) owned or managed by Palamanui Global Holdings, LLC (Palamanui). These lands fall within a portion of the 1,583 ac (640 ha) proposed as critical habitat in Hawaii—Lowland Dry—Unit 33; the proposed unit is occupied by *Mezoneuron kawaiense*, and unoccupied but essential to the conservation of *Bidens micrantha* ssp. *ctenophylla* and *Isodendrion pyriform* (77 FR 63928; October 17, 2012). Palamanui has demonstrated their willingness to work as a conservation partner by undertaking site management that provides important conservation benefits to the native Hawaiian species that depend upon the lowland dry ecosystem habitat. Under

an integrated natural cultural resource management plan (INCRMP 2005) addressing preservation, mitigation, management, and stewardship measures for the natural and cultural resources at the Palamanui development, Palamanui successfully implemented the following conservation actions on their lands: (1) Fencing to protect a 55-ac (22-ha) Lowland Dry Forest Preserve (Preserve) and other endangered plant locations outside the Preserve; (2) maintenance of firebreaks to control the threat of fire at the Preserve and other endangered plant locations outside the Preserve; (3) establishment of the Palamanui Dry Forest Working Group and research partnership; and (4) partnerships with other landowners and practitioners to benefit the conservation and recovery of dry forest species and their habitat.

Subsequent to the publication of the October 17, 2012, proposed rule, Palamanui participated in a series of collaborative meetings with the Service, County of Hawaii, Department of Hawaiian Homelands, Department of Land and Natural Resources, and other stakeholders in proposed Critical Habitat Units 31, 33, 34, and 35, to address species protection and recovery and development on a regional scale. In 2015, Palamanui signed a memorandum of understanding (MOU) with the Service wherein they agreed to implement important conservation actions beneficial to *Bidens micrantha* ssp. *ctenophylla*, *Isodendrion pyrifolium*, and *Mezoneuron kawaiense*, and the lowland dry ecosystem upon which they depend (Memorandum of Understanding Between Palamanui Global Holdings LLC and U.S. Department of Interior Fish and Wildlife Service 2015). In the MOU, Palamanui agreed to increase the area of fenced and managed lowland dry forest protected within the Preserve by 19 ac (7.7 ha), for a total of

approximately 75 ac (30 ha). Palamanui also agreed to ensure funding for conservation actions within the Preserve for the next 20 years at a minimum of \$50,000 per year. Palamanui will also contribute conservation actions valued at an additional \$200,000 to benefit the recovery of the three plant species and the lowland dry ecosystem, and agreed to work cooperatively with the Service or other conservation partners to conduct activities expected to benefit *Bidens micrantha* ssp. *ctenophylla*, *Isodendrion pyrifolium*, and *Mezoneuron kawaiense* and their habitat. Implementation has already been initiated on the following actions agreed to in the MOU: (1) Firebreak maintenance around the Preserve; (2) fence maintenance to exclude ungulates from the Preserve and removal of ungulates that had been allowed to enter the Preserve; (3) regular weed control in the Preserve; and (4) propagation, outplanting, and maintenance of listed species in the Preserve.

Lanikai Properties

In the October 17, 2012, proposed rule (77 FR 63928), we considered the exclusion of 47 ac (19 ha) of land owned/managed by Lanikai Properties. These lands fall within a portion of the 961 ac (389 ha) proposed as critical habitat in Hawaii—Lowland Dry—Unit 34; the proposed unit is occupied by *Bidens micrantha* ssp. *ctenophylla*, and *Mezoneuron kawaiense*, and unoccupied but essential to the conservation of *Isodendrion pyrifolium* (77 FR 63928; October 17, 2012). Lanikai Properties has demonstrated their willingness to work as a conservation partner by undertaking site management that provides important conservation benefits to the native

Hawaiian species that depend upon the lowland dry ecosystem habitat. In 2010, Lanihau Properties agreed to set aside a 4.6-ac (1.9-ha) area as a dryland forest reserve and implement conservation measures as a condition for issuance of a county grading permit associated with the construction of the Ane Keohokalole Highway (USFWS 2010, in litt.).

Subsequent to the publication of the October 17, 2012, proposed rule, Lanihau Properties participated in a series of collaborative meetings along with the Service, County of Hawaii, Department of Hawaiian Homelands, Department of Land and Natural Resources, and other stakeholders in proposed Critical Habitat Units 31, 33, 34, and 35, to address species protection and recovery and development on a regional scale. In 2014, Lanihau Properties signed an MOU with the Service wherein they agreed to implement important conservation actions beneficial to *Bidens micrantha* ssp. *ctenophylla*, *Isodendrion pyrifolium*, and *Mezoneuron kawaiense*, as well as other rare and endangered plant species and their habitat in the lowland dry ecosystem (Memorandum of Understanding between Lanihau Properties and U.S. Department of Interior Fish and Wildlife Service 2014, entire). In the agreement, Lanihau Properties agreed to set aside and not undertake development in an approximately 16-ac (6-ha) area, adding 11.4 ac (4.6 ha) to the previous 4.6-ac (1.9-ha) set aside, and work cooperatively with the Service or other conservation partners to conduct activities expected to benefit the conservation of the three species and the lowland dry ecosystem for the next 20 years.

Department of Hawaiian Home Lands

In the October 17, 2012, proposed rule (77 FR 63928), we announced we were considering the exclusion of 87 ac (35 ha) of lands owned by the Department of Hawaiian Home Lands (DHHL) out of the total 446 ac (181 ha) of DHHL land proposed as critical habitat. Based on a new MOU evidencing a more robust partnership with the Service, summarized below, and updated land ownership records that added approximately 46.5 ac (18.4 ha) to DHHL's land considered for exclusion, we are now considering the exclusion of 492 ac (199 ha) of lands owned by DHHL. These lands fall within portions of two proposed units. The DHHL owns 91 ac (30 ha) of the 1,583 ac (640 ha) proposed as critical habitat in Hawaii—Lowland Dry—Unit 33; this proposed unit is occupied by *Mezoneuron kawaiense*, and unoccupied by but essential to the conservation of *Bidens micrantha* ssp. *ctenophylla* and *Isodendrion pyrifolium*. The DHHL also owns 401 ac (165 ha) of the 1,192 ac (485 ha) proposed as critical habitat in Hawaii—Lowland Dry—Unit 35; this proposed unit is occupied by *Bidens micrantha* ssp. *ctenophylla*, *Isodendrion pyrifolium*, and *Mezoneuron kawaiense* (77 FR 63928; October 17, 2012).

The DHHL has worked in partnership with the Service to protect and restore endangered and threatened species and their habitats during the last 15 years on Hawaii Island. In December 2010, the Hawaiian Homes Commission adopted the “Aina Mauna Legacy Program,” a 100-year plan to reforest approximately 87 percent of a 56,200-ac (22,743-ha) contiguous parcel managed by DHHL on the eastern slope of Mauna Kea, Hawaii Island. Implementation of the Aina Mauna Legacy Program calls for removal of all feral ungulates from the Aina Mauna landscape and several restoration projects have

been implemented to benefit endangered and threatened species and their habitats (DHHL 2009, pp. 19-21). Each of these projects received funding from the Service's Partners for Fish and Wildlife Program for 10-year landowner agreements to maintain the conservation actions, and includes multiple partners such as the State, National Wildlife Refuge System, and the Mauna Kea Watershed Alliance.

From 1996 to 2006, the DHHL acquired a total of approximately 685 ac (277 ha) at Laiopua, Kealakehe, and Keahuolu from the Hawaii Housing Finance Development Corporation (HHFDC, previously HCDCH) (Masagatani 2012, in litt.) and subsequently committed two parcels equaling approximately 40 ac (16 ha) for the development, management, and maintenance as preserves with the sole purpose of protecting of *Bidens micrantha* ssp. *ctenophylla*, *Isodendron pyriform*, *Mezoneuron kavaense*, and other endangered species. The three parcels included the two principal preserves of the 1999 plan and the area identified for protection of archaeological resources, for a total of 73 ac (29 ha) protected. Since 2010, the DHHL has committed approximately \$1,198,052 for the development and management of the preserve areas (Masagatani 2012, in litt.). Conservation actions in the preserve areas include: (1) Fencing to exclude ungulates and prevent human trespass; (2) control and removal of nonnative plants; (3) control and prevention of the threat of fire; (4) propagation, outplanting, and care of common native and endangered plant species; and (5) promoting community volunteer and education programs that support native plant conservation.

Subsequent to the publication of the October 17, 2012, proposed rule, the DHHL participated in a series of collaborative meetings with the Service, County of Hawaii,

Department of Land and Natural Resources, and other stakeholders in Units 31, 33, 34, and 35, to address species protection and recovery and development on a regional scale. In 2015, the DHHL signed an MOU with the Service for a conservation agreement expected to benefit the recovery of *Bidens micrantha* ssp. *ctenophylla*, *Isodendrion pyriform*, and *Mezoneuron kawaiense*, as well as other rare and listed plant species and their habitat in the lowland dry ecosystem (Memorandum of Understanding Between the Department of Hawaiian Home Lands and U.S. Department of Interior Fish and Wildlife Service 2015). Under the agreement, the DHHL will continue to protect the 73 ac (29 ha) of existing preserves and agrees to set aside and not develop an additional 24 ac (10 ha) for a total protected area of 97 ac (39 ha) to benefit the recovery of the three plant species and the lowland dry ecosystem. The DHHL agreed in the MOU to funding conservation actions valued at \$3.229 million on 44 ac (18 ha) of the existing preserves for 40 years and within the additional 24 ac (10 ha) for 20 years. The remaining 29 ac (ha) of existing preserves will not be actively managed but will remain protected from development. Conservation actions on the 68 managed acres include: (1) Fencing to exclude ungulates; (2) control and the prevention of the threat of fire; (3) control and removal of nonnative plant species; (4) propagation, outplanting, and care of *Bidens micrantha* ssp. *ctenophylla*, *Isodendrion pyriform*, and *Mezoneuron kawaiense*, and other rare and endangered plant species; and (5) other management actions expected to benefit the recovery of listed plant species and the lowland dry ecosystem. Implementation has already been initiated on the following actions agreed to in the MOU: (1) Fence and firebreak maintenance around the preserves; (2) regular weed control of the managed

areas in the preserves; and (3) initiated improvements to the fences and gates in the existing Aupaka Preserve, including raising the height of the fence to exclude ungulates and removing barbed wire, which is a threat to the endangered Hawaiian hoary bat (*Lasiurus cinereus semotus*).

Additional Areas Currently Under Consideration for Exclusion

Waikoloa Village Association

We are considering excluding 1,758 ac (711 ha) of lands from critical habitat that are owned or managed by the Waikoloa Village Association (WVA). These lands include the majority of the 1,779 ac (720) proposed as critical habitat in Hawaii—Lowland Dry—Unit 32; the proposed unit is occupied by one of the three plant species, *Mezoneuron kavaense*, and is unoccupied but essential to the conservation of *Bidens micrantha* ssp. *ctenophylla* and *Isodendrion pyriform* (77 FR 63928; October 17, 2012). Since 2012, the WVA has voluntarily facilitated and supported the conservation of *Isodendrion pyriform* and *Mezoneuron kavaense* and other federally listed species and their habitat in the lowland dry ecosystem, on their privately owned lands. In 2012, the WVA Board of Directors granted permission to protect and restore 275 ac (111 ha) of dry forest habitat south of Waikoloa Village for a period of 75 years by way of a license agreement with the nonprofit Waikoloa Dry Forest Initiative, Inc. The project's management program includes: (1) Construction and maintenance of a 275-ac (111-ha) fence to exclude ungulates; (2) removal of ungulates from the fenced enclosure; (3) control of nonnative plant species to reduce competition and the threat of fire; (4)

integrated pest management to reduce impacts on native plant species; (5) provision of infrastructure for propagation and maintenance of outplantings; (6) establishment of common native and endangered plant species; and (7) education and community outreach activities. Furthermore, in 2014, the WVA signed an MOU with the Service wherein they agreed to implement important conservation actions beneficial to *Mezoneuron kawaiense*, *Isodendron pyriform* and *Bidens micrantha* ssp. *ctenophylla* and the lowland dry ecosystem upon which they depend (Memorandum of Understanding between Waikoloa Village Association and U.S. Department of Interior Fish and Wildlife Service 2014, entire). The WVA agreed not to undertake development in 60 ac (24 ha) adjacent to the Waikoloa Dry Forest Recovery Project's 275-ac (111-ha) enclosure and to work cooperatively with the Service or other conservation partners to conduct activities expected to benefit *Mezoneuron kawaiense*, *Isodendron pyriform*, and *Bidens micrantha* ssp. *ctenophylla* and their habitat.

County of Hawaii

We are considering exclusion of 165 ac (67 ha) of lands owned by the State of Hawaii that are under management of the County of Hawaii (County). These lands fall within a portion of the 1,192 ac (485 ha) proposed as critical habitat in Hawaii—Lowland Dry—Unit 35; the proposed unit is occupied by *Bidens micrantha* ssp. *ctenophylla*, *Isodendron pyriform*, and *Mezoneuron kawaiense* (77 FR 63928; October 17, 2012). Since 2010, the County of Hawaii (County) has been involved in voluntary cooperative partnerships and conservation agreements with the Service for the conservation of rare

and endangered species and their habitats. In 2010, the County helped facilitate protection of over 150 ac (61 ha) of lowland dry ecosystem habitat known to contain numerous listed plant species (USFWS 2010, in litt.).

Subsequent to the publication of the October 17, 2012, proposed rule, the County participated in a series of collaborative meetings with the Service, Department of Hawaiian Homelands, Department of Land and Natural Resources, and other stakeholders in Units 31, 33, 34, and 35, to address species protection and recovery and development on a regional scale. In 2015, the County signed an MOU with the Service wherein they agreed to implement important conservation actions beneficial to *Bidens micrantha* ssp. *ctenophylla*, *Isodendrion pyrifolium*, and *Mezoneuron kawaiense*, as well as other rare and listed plant species and their habitat in the lowland dry ecosystem (Memorandum of Understanding Between County of Hawaii and U.S. Department of Interior Fish and Wildlife Service 2015, entire). The County agreed to set aside and not develop approximately 30 ac (12 ha) of lands under its management, and also agreed to conduct conservation actions valued at \$1.534 million on a total of 50.1 ac (20.3 ha) to benefit the recovery of the three plant species, as well as other rare and listed plant species and their habitat in the lowland dry ecosystem, over the next 20 years. The 50.1 ac (20.3 ha) where conservation actions will occur includes 30 ac (12 ha) owned by the County, 4.2 ac (1.7 ha) owned by the Hawaii Housing Finance and Development Corporation, and 15.9 ac (6.4) owned by Lanihau Properties. Of the total 30 ac (12 ha) of County land protected from development, 22 ac (8.9 ha) are adjacent to a 4.2-ac (1.7-ha) set-aside by the Hawaii Housing Finance and Development Corporation and another

21.7-ac (8.8-ha) set-aside by the Department of Hawaiian Homelands; these three areas together create approximately 47.9 contiguous acres (19.4 ha) protected for the conservation of the three species and the lowland dry ecosystem. The remaining 8-ac (3.2-ha) set-aside is located within the proposed Kealahou Regional Park and adjacent to an existing 3.4-ac (1.4-ha) preserve managed by County but owned by the Hawaiian Department of Land and Natural Resources. Because the conservation actions will occur in some areas jointly managed by the County and other agencies or at offsite locations, the County will work cooperatively and in partnership with these landowners. These conservation actions will include: (1) Fencing to exclude ungulates; (2) control and prevention of the threat of fire; (3) control of nonnative plant species; and (4) other management actions expected to benefit the recovery of listed plant species and the lowland dry ecosystem.

Hawaii Housing Finance and Development Corporation

We are considering exclusion of 30 ac (12 ha) of lands owned by the State of Hawaii that are under management of the Hawaii Housing Finance and Development Corporation (HHFDC). These lands fall within a portion of the 1,192 ac (485 ha) proposed as critical habitat in Hawaii—Lowland Dry—Unit 35; the proposed unit is occupied by *Bidens micrantha* ssp. *ctenophylla*, *Isodendron pyriform*, and *Mezquiteur kawaiense* (77 FR 63928; October 17, 2012). The HHFDC has demonstrated their willingness to work as a conservation partner by undertaking site management that provides important conservation benefits to the native Hawaiian species that depend upon

the lowland dry ecosystem habitat.

Subsequent to the publication of the proposed rule, HHFDC participated in a series of collaborative meetings with the Service, Department of Hawaiian Homelands, Department of Land and Natural Resources, and other stakeholders in Units 31, 33, 34, and 35, to address species protection and recovery and development on a regional scale. In 2016, HHFDC signed an MOU with the Service wherein they agreed to implement important conservation actions beneficial to *Bidens micrantha* ssp. *ctenophylla*, *Isodendrion pyriform* and *Mezoneuron kawaiense* and their habitat, as well as to other rare and federally listed species and their habitat in the lowland dry ecosystem (Memorandum of Understanding Between Hawaii Housing Finance and Development Corporation and U.S. Department of Interior Fish and Wildlife Service 2016, entire). The HHFDC agreed to set aside and not develop approximately 4.2 ac (1.7 ha) of lands under its management to provide protection and management for one of the seven remaining mature individuals of *Mezoneuron kawaiense* in proposed Unit 35, as well as other rare and listed plant species and their habitat in the lowland dry ecosystem, over the next 20 years. The 4.2 ac (1.7 ha) protected from development by the HHFDC are adjacent to the 22-ac (8.9-ha) set-aside by the County and another 21.7-ac (8.8-ha) set-aside by the Department of Hawaiian Homelands; these three areas together create approximately 47.9 contiguous acres (19.4 ha) protected for the conservation of the three species and the lowland dry ecosystem. Because the conservation actions will occur in some areas jointly managed by the HHFDC and other agencies, the HHFDC will work cooperatively and in partnership with these landowners and the Service. These

conservation actions will include: (1) Fencing to exclude ungulates; (2) control and prevention of the threat of fire; (3) control of nonnative plant species; and (4) other management actions expected to benefit the recovery of listed plant species and the lowland dry ecosystem.

Forest City Kona

We are considering the exclusion of 265 ac (107 ha) of lands that are owned by Forest City Kona, LLC. These lands fall within a portion of the 1,192 ac (485 ha) proposed as critical habitat in Hawaii—Lowland Dry—Unit 35; the proposed unit is occupied by *Bidens micrantha* ssp. *ctenophylla*, *Isodendrion pyrifolium*, and *Mezoneuron kawaiense* (77 FR 63928; October 17, 2012). Forest City Kona has demonstrated their willingness to work as a conservation partner by undertaking site management that provides important conservation benefits to the native Hawaiian species that depend upon the lowland dry ecosystem habitat.

Subsequent to the publication of the October 17, 2012, proposed rule, Forest City Kona participated in a series of collaborative meetings with the Service, Department of Hawaiian Homelands, Department of Land and Natural Resources, and other stakeholders in Units 31, 33, 34, and 35, to address species protection and recovery and development on a regional scale. In 2016, Forest City Kona signed an MOU with the Service wherein they agreed to implement important conservation actions beneficial to *Bidens micrantha* ssp. *ctenophylla*, *Isodendrion pyrifolium*, and *Mezoneuron kawaiense* and their habitat, as well as other rare and federally listed species and their habitat in the

lowland dry ecosystem (Memorandum of Understanding between Forest City Kona and U.S. Department of Interior Fish and Wildlife Service 2016, entire). Forest City Kona agreed to set aside and not undertake development in two areas, totaling 20 ac (8 ha), and to work cooperatively with the Service on approved conservation programs to conduct activities to benefit the conservation of the three species and the lowland dry ecosystem in these areas for the next 20 years. The MOU's conservation actions include: (1) Fencing to exclude ungulates; (2) control of nonnative plant species; (3) propagation, outplanting, and care of *Bidens micrantha* ssp. *ctenophylla*, *Isodendrion pyriform*, and *Mezoneuron kawaiense*, as well as other rare and common native plant species; (4) control and prevention of the threat of fire; and (5) other management actions expected to benefit the recovery of listed plant species and the lowland dry ecosystem. The MOU also includes a commitment from Forest City Kona to provide \$500,000 towards the implementation of on-site or off-site conservation actions within the North Kona region that will benefit the recovery of the three plant species and the lowland dry ecosystem.

Queen Liliuokalani Trust

In the October 17, 2012, proposed rule (77 FR 63928), we stated that we were not considering for exclusion lands owned by Queen Liliuokalani Trust (QLT) for the following reasons: (1) The conservation plans in place at the time only addressed actions related to *Isodendrion pyriform*, but did not address conservation of the other two plants with proposed critical habitat on the land, *Bidens micrantha* ssp. *ctenophylla* and *Mezoneuron kawaiense*; and (2) since 2005, we were unaware of efforts to outplant

propagated individuals of *Isodendrion pyriformis* or any current plans to conserve listed species or their habitats in the lowland dry ecosystem on the lands at Keahuolu owned by QLT. In 2014, QLT signed an MOU with the Service addressing both of these previous concerns. We are now considering exclusion of 302 ac (122 ha) of lands that are owned or managed by QLT. These lands fall within a portion of the 1,192 ac (485 ha) proposed as critical habitat in Hawaii— Lowland Dry—Unit 35; the proposed unit is occupied by *Bidens micrantha* ssp. *ctenophylla*, *Isodendrion pyriformis*, and *Mezoneuron kawaiense* (77 FR 63928; October 17, 2012).

Since 2004, QLT has supported the conservation of federally listed species and their habitat in the lowland dry ecosystem, on their privately owned lands. In 2004, the QLT entered into an agreement with the Service’s Partners for Fish and Wildlife Program to conduct research on the propagation of two endangered plants, *Isodendrion pyriformis* and *Neraudia ovata*, in order to secure genetic material in *ex situ* storage and provide individuals of each species for reintroduction or restoration projects. In February 2014, the QLT signed an MOU with the Service wherein they agreed to implement important conservation actions beneficial to *Bidens micrantha* ssp. *ctenophylla*, *Isodendrion pyriformis*, and *Mezoneuron kawaiense*, as well as other rare and listed plant species and their habitat in the lowland dry ecosystem (Memorandum of Understanding between Queen Liliuokalani Trust and U.S. Department of Interior Fish and Wildlife Service 2014, entire). The management actions included in the MOU are: (1) Fencing to exclude ungulates; (2) control and prevention of the threat of fire; (3) propagation and outplanting of *Bidens micrantha* ssp. *ctenophylla*, *Isodendrion pyriformis*, and *Mezoneuron*

kavaiense, as well as six other rare or listed plant species; (4) weed control; (5) watering and maintenance of outplanted individuals; (6) monitoring and reporting; (7) analysis of success criteria; and (8) adaptive management. The QLT also agreed to set aside and not undertake development in a separate 28-ac (11-ha) area and work cooperatively with the Service or other conservation partners to conduct activities to benefit the conservation of the three species and the lowland dry ecosystem. This area will be available for the conservation and propagation efforts for the three species and other listed and rare species of the lowland dry ecosystem.

In addition to the agreements and commitments detailed above, QLT developed a culturally based service learning program that has involved over 1,300 beneficiaries, school groups, and other community members in removing invasive species. QLT continues to spend over \$12,000 per year to control invasive species, such as fountain grass (*Cenchrus setaceum*) and haole koa (*Leucaena leucocephala*). Other significant expenditures include funds spent on security in response to trespassing and vandalism on its Kona lands (QLT 2013).

Summary of Areas Considered for Exclusion

We are considering exclusion of these non-Federal lands because we believe the exclusion may result in the continuation, strengthening, or encouragement of important conservation partnerships that will contribute to the long-term conservation of *Bidens micrantha* ssp. *ctenophylla*, *Mezoneuron kavaiense* and *Isodendrion pyrifolium*. The development and implementation of management plans, and ability to access private

lands necessary for surveys or monitoring designed to promote the conservation of these federally listed plant species and their habitat, as well as provide for other native species of concern, would be important outcomes of these conservation partnerships.

The final designation may not exclude these areas, or be limited to these exclusions, but may also consider other exclusions as a result of continuing analysis of relevant considerations (scientific, economic, and other relevant factors, as required by the Act) and the public comment process. In particular, we solicit comments from the public on whether to make the specific exclusions we are considering, and whether there are other areas that are appropriate for exclusion.

The final decision on whether to exclude any area will be based on the best scientific data available at the time of the final designation, including information obtained during the comment periods and information about the economic impact of the designation.

Authors

The primary authors of this document are the staff members of the Pacific Islands Fish and Wildlife Office, Pacific Region, U.S. Fish and Wildlife Service.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Date: May 11, 2016

Karen Hyun

Acting Principal Deputy Assistant Secretary for Fish and Wildlife and Parks

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